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Chairman: Mr. Ali ..... (Malaysia)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Ms. McLurg

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The meeting was called to order at 10.10 a.m.

Agenda item 128: Programme budget for the biennium 2008-2009 (*continued*)

Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/62/7/Add.36, A/62/538 and Add.1; A/C.5/61/19)

1. **Ms. Haji-Ahmed** (Director, Operational Services Division), introducing the report of the Secretary-General on conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/62/538 and Add.1), recalled that, in its resolution 61/262, the General Assembly had requested the Secretary-General to review and update the travel and subsistence regulations of the International Court of Justice, taking into account the related recommendation of the Advisory Committee on Administrative and Budgetary Questions (A/61/612, para. 15) and bearing in mind the relevant provisions of the Statute of the International Court of Justice, and to report thereon to the General Assembly at its sixty-second session.

2. In the same resolution, the Assembly had also requested the Secretary-General to report to it at its sixty-second session on options for designing pension schemes for the members of the Court, and the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, including defined-benefit and defined-contribution schemes, taking into account the possibility of calculating pensions on the basis of the number of years served rather than the term of office. A study on options for designing pensions had been commissioned from a consulting firm and would be submitted as an addendum to the present report.

3. Prior to the adoption of resolution 61/262, the President of the Assembly had informed delegations that he had received a letter dated 3 April 2007 from the President of the Court (A/61/837) expressing the Court's deep concern that provisions of the resolution on the emoluments of the judges would create inequality among them and requesting the Assembly to consider postponing action on the draft resolution. At the time of the adoption of the resolution, a number of delegations had expressed their concerns about the issues raised in the letter from the President of the Court and had requested that they should be addressed in the context of the Secretary-General's report to be submitted at the sixty-second session.

4. With respect to travel and subsistence, pursuant to the Statute of the Court, the General Assembly was responsible for fixing the conditions under which the members of the Court had their travelling expenses refunded. There were separate travel and subsistence regulations, distinct from those applicable to officials of the United Nations Secretariat.

5. The Secretary-General recommended no change in the level of accommodation provided to the members of the Court and clarified that the amount of the assignment grant provided for in the travel and subsistence regulations should be based on the standard subsistence rates in effect for senior Secretariat officials.

6. With respect to remuneration and retirement benefits, by its resolution 59/282 the General Assembly had requested the Secretary-General to submit a comprehensive report at its sixty-first session, including proposals for a mechanism of remuneration based on market exchange rates and local retail price fluctuations that limited the divergence of such remuneration from that of comparable positions within the United Nations system. In response, the Secretary-General had proposed the introduction of a revised salary system comprising an annual net base salary plus a post adjustment. While the General Assembly had endorsed the proposal in its resolution 61/262, it had not agreed with the annual net salary level proposed and had decided instead to set, effective 1 January 2007, the annual net base salary of the members of the Court and the judges and ad litem judges of the Tribunals at US$ 133,500, with a corresponding post adjustment per index point equal to 1 per cent of the net base salary, to which would be applied the post adjustment multiplier for the Netherlands or for the United Republic of Tanzania. The new salary system would apply to judges serving in Arusha and to newly elected judges coming on board. The General Assembly had also decided that the former salary system, whereby the salaries of the judges serving in The Hague were paid in euros at the

floor exchange rate, would continue to apply to judges already on board in The Hague.

7. The Secretary-General's report (A/62/538 and Add.1) summarized the arguments presented by the Court on remuneration and retirement benefits and the implications of General Assembly resolution 61/262 with regard to certain provisions of the Statute of the Court, and the Court's concerns regarding equality among members of the Court, equality between members of the Court and ad hoc judges, equality among ad hoc judges and re-elected judges. The Court had concluded that resolution 61/262 was not compatible with the basic principles underlying the Statute of the Court.

8. The Secretary-General indicated that he had taken account of the Court's comments as well as the conclusion of the Legal Counsel that the concerns of the Court regarding equality were justified. The Secretary-General would therefore request Member States to rectify the situation.

9. Concerning the annual remuneration of the judges, the report set out two possible options for consideration by Member States (A/62/538, paras. 74 and 75). With respect to retirement benefits, should the General Assembly make a decision relating to the level of annual salary of the members of the Court and the judges of the Tribunals, it was recommended that pensions in payment should be adjusted accordingly (para. 84).

10. The financial implications of the options proposed were set out in the table in paragraph 86 of the report.

11. Lastly, should the General Assembly decide to revert to the three-year review cycle, the next comprehensive review would be undertaken at its sixty-fifth session, in 2010.

12. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee (A/62/7/Add.36), said that the Advisory Committee did not object to the Secretary-General's proposal that no changes should be made to the provisions of articles 1 and 2 of the travel and subsistence regulations of the Court. The Advisory Committee also agreed with the Secretary-General's recommendation that there should be no change to the provision on the assignment grant contained in article 3 of those regulations.

13. Regarding the remuneration of the members of the Court and the judges and ad litem judges of the International Tribunals, the Advisory Committee had analysed the two options proposed by the Secretary-General. The first option was to establish salaries in euros, subject to periodic cost-of-living adjustments. The Advisory Committee noted that international salary scales within the United Nations were based on the United States dollar, with adjustments for inflation and currency fluctuations through the post adjustment system. Establishing salaries in a currency other than the United States dollar for members of the Court and for the judges of the Tribunals would be a departure from current practice, the implications of which the General Assembly would need to analyse fully.

14. The second option was to maintain the system whereby the salaries of the judges consisted of a net base salary in United States dollars and a post adjustment amount. The Secretary-General proposed that the starting point for establishing the net base salary of the judges should be $173,430 per annum.

15. Regarding the question of emoluments paid to ad hoc judges appointed prior and subsequent to the adoption of General Assembly resolution 61/262, the Assembly might wish to examine the impact of the implementation of that resolution on the position of ad hoc judges sitting in the same cases.

16. Lastly, with respect to retirement benefits, the Advisory Committee had been informed that a comprehensive study on options for designing pension schemes would be presented at the second part of the resumed sixty-second session. The Committee therefore recommended that the General Assembly should defer consideration of the retirement benefits for members of the Court pending receipt of the pension study.

17. **Mr. Hunte** (Antigua and Barbuda), speaking on behalf of the Group of 77 and China, said that the Group attached great importance to the work of the International Court of Justice and the International Tribunals and that it had always advocated a compensation package that was commensurate with the status and responsibilities of the members and judges.

18. The Group supported the principle that the salaries and allowances of the judges of the Court and

the International Tribunals were fixed by the General Assembly and could not be decreased during their term of office. It also considered equality among judges to be a basic principle of the system of international adjudication of disputes between States.

19. In its resolution 61/262, the General Assembly had requested the Secretary-General to review and update the travel and subsistence regulations of the Court. The Group concurred with the Secretary-General and the Advisory Committee that the current provisions of those regulations should be maintained.

20. Regarding remuneration, the Group noted with concern that a situation had been created in which the principle of equality of members of the Court and ad hoc judges was not being maintained. The Group strongly supported the principles of both the Charter of the United Nations and the Statute of the Court and was committed to ensuring equality of compensation and of conditions of service for all judges.

21. The Secretary-General had presented two options for protecting the level of remuneration and the equality of members of the Court and ad hoc judges that did not affect the General Assembly's decision to abandon the floor/ceiling mechanism. The Group was willing to adopt a decision in line with those options.

22. The Group also noted that, in its resolution 61/262, the General Assembly had requested the Secretary-General to submit, at the current session, options for designing pension schemes for the members of the Court, and the judges of the International Tribunals. It regretted that the relevant report was not before the Committee; it should be considered before the end of the sixty-second session.

23. Decisions on salaries and other allowances for any category of judges working within the United Nations system should be considered on their merits. All other situations would be handled in accordance with the procedures prescribed by the appropriate forum.

24. **Ms. Simkić** (Slovenia), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia, Georgia, Moldova and Ukraine, said that the European Union reaffirmed its unreserved support for the judges and all personnel of the Court and the International Tribunals. The Court and the Tribunals contributed to the maintenance of international peace and security and played a key role in the interpretation, application and development of public international law.

25. The General Assembly had adopted resolution 61/262 by consensus, with a view to making the conditions of service and compensation for members of the Court and judges and ad litem judges of the International Tribunals clearer and more transparent. The new system for determining salaries was linked to the system applied for Secretariat officials, while recognizing the special character of the judges of the Court as elected members of one of the principal organs of the United Nations. The European Union and others had made every effort to ensure that the new system fulfilled the objective of harmonizing and simplifying organizational procedures without adversely impacting on any serving judge.

26. The European Union noted the concerns of the Court that the remuneration system contained in resolution 61/262 was not in conformity with the principle of equality of all judges.

27. The European Union reiterated its support for the Court's invaluable work and stood ready to examine the Secretary-General's proposals, bearing in mind the Court's concerns.

28. **Mr. Ruiz Massieu** (Mexico), speaking on behalf of the Rio Group, said, with regard to the remuneration of the judges of the Court, that the Group had taken note of the concerns expressed in the letter dated 3 April 2007 from the President of the Court to the President of the General Assembly (A/61/837) and in the summary of the Court's arguments contained in the Secretary-General's report (A/62/538) regarding the incompatibility between General Assembly resolution 61/262 and the principle of equality of all judges. The Group was confident that the Committee would be able to devise a solution at the resumed session that ensured equal treatment of all judges, and considered the Secretary-General's second option a good basis for discussion. However, any decision should not be considered a precedent for future General Assembly decisions pertaining to other judicial forums in the United Nations system.

29. Regarding travel and subsistence regulations and assignment grants, the Group concurred with the Advisory Committee that they should not be changed

for the moment, given the sui generis nature of the judges' conditions of service and the arguments contained in the Secretary-General's report.

30. Lastly, the Group reiterated that the decisions of the General Assembly must be respected and fully implemented.

31. **Mr. Hoe** Yeen Teck (Singapore) said that, in its resolution 61/262, the General Assembly had sought to rectify the issue of compensation of judges; however, the resolution had had a knock-on budgetary effect on the salaries of the judges of the Court. In the opinion of the Court, the salary differentials among its judges were inconsistent with the Court's Statute and, by extension, the Charter of the United Nations. In her letter to the President of the General Assembly, the President of the Court had stated that the equality of all judges was a fundamental principle underlying the Statute of the Court. Given those concerns, the Committee should review the issue.

32. Singapore was willing to consider both options presented in the Secretary-General's report but saw greater merit in the second option. While addressing the Court's concerns regarding salary differentials, the second option allowed the Court to transition to the common system, as recommended by the International Civil Service Commission (ICSC). That transition would be completed in 2013, when the last of the judges of the Court on the old system completed their current terms.

33. **Mr. Davide** (Philippines) said that his delegation noted with grave concern the letter from the President of the Court on the implications of General Assembly resolution 61/262 with regard to the Statute of the Court (A/61/837).

34. The Secretary-General's report confirmed that the measures contained in resolution 61/262 would give rise to inequality among members of the Court and between members of the Court and ad hoc judges. Specifically, the remuneration of members elected after 1 January 2007 would be substantially lower than the remuneration received by members elected before 1 January 2007.

35. Complete equality among judges was essential to the system of adjudication of international disputes among States and to ensuring that the sovereign equality of States, which underlay the current international legal system, was upheld in judicial proceedings between them.

36. The problem of inequality among the judges of the Court was clearly illustrated by the situation in *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, wherein one ad hoc judge had been appointed prior to the adoption of resolution 61/262 and one after. Affording the nominee of one party to a dispute treatment that was not equal to the treatment afforded the nominee of the other party would seriously undermine the integrity of the Court's proceedings and would run counter to the fundamental principle of sovereign equality, the lynchpin of all multilateral institutions; it was also contrary to the Court's Statute.

37. Inequality among the members of the International Tribunals could not have been the intended result of resolution 61/262. The General Assembly should address the Court's legitimate concerns by increasing the annual net base salary to a level that ensured complete equality. In the interest of preserving the integrity of the international dispute resolution mechanism, the matter should be resolved as expeditiously as possible.

38. **Mr. Álvarez** (Uruguay) expressed his deep concern that, in its adoption of resolution 61/262, the General Assembly had inadvertently undermined the general principle of law whereby all parties to a dispute were equal. The General Assembly clearly had not taken into account the particular situation arising from the Statute of the Court, which formed an integral part of the Charter of the United Nations. That inconsistency had been pointed out in the Secretary-General's report, by of the Legal Counsel and by the Court, which had been established under the Charter as the principal judicial organ for interpreting the law. A satisfactory solution, on the basis of the options in the Secretary-General's report, must be found.

39. **Mr. Rashkow** (United States of America) said that his delegation fully supported the work of the Court and the International Tribunals. He noted the Court's important role in facilitating the peaceful resolution of disputes and commended the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda on their ongoing efforts to bring justice and accountability to the innocent victims of the terrible crimes committed in those two former conflict regions.

40. The United States remained committed to ensuring the judicial independence of the Court and the International Tribunals and to the principle of fair and adequate compensation for their personnel. It noted that, at its sixty-first session, the General Assembly had taken a decision to align the system for compensating Court and Tribunal personnel on the common system; Member States had determined that the salaries of the judges should consist of a net base salary plus a post adjustment. The United States generally shared the concerns of the Advisory Committee regarding the Secretary-General's new proposals for determining compensation and concurred with its recommendation that the Assembly should defer consideration of the retirement benefits for members of the Court pending receipt of the report currently being prepared.

41. **Mr. Torres-Lépori** (Argentina) said that the General Assembly, in its resolution 61/262, had aimed to put an end to the serious salary distortions between members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

42. The principle of equal status among members of the International Court of Justice, an institution established by the Charter of the United Nations and holding an undisputed primacy in the legal order of the Organization, was essential. A solution to the current problem must be sought on the basis of the options presented in the report of the Secretary-General. Taking into account the recommendations of the Advisory Committee, his delegation favoured increasing net base salaries to maintain current levels of remuneration and to ensure that the terms of the General Assembly resolution were not breached.

43. **Mr. Rosales Díaz** (Nicaragua) said that his delegation must once again express disappointment at the late submission of the reports of the Advisory Committee, which prevented the Fifth Committee from considering the matters before it in a fitting and thorough manner. Furthermore, the Fifth Committee had not yet received the awaited report on options for designing pension schemes for the members of the International Court of Justice and for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

44. Having had the largest number of cases before the International Court of Justice since its establishment in 1945, Nicaragua believed that that institution's impartiality must be safeguarded; his delegation would therefore continue to support the authority and role of the Court, and the strengthening of its functioning. The General Assembly had a fundamental duty to ensure that all members of the International Court of Justice and all judges of the International Tribunals were treated equally in terms of salary and conditions of service. In that connection, only the Fifth Committee was empowered to take administrative and budgetary decisions.

45. Recalling that an undesired effect of General Assembly resolution 61/262 was the risk that two ad hoc judges assigned to the same case would have different levels of compensation, he said that his delegation favoured the second remuneration option indicated by the Secretary-General in his report (A/62/538, paras. 75-77), which, if properly implemented, would satisfy the need for equal pay for equal work and would prevent a lengthy debate on the first option (A/62/538, para. 74), which, as the Advisory Committee had pointed out, held consequences for the entire United Nations system.

46. **Mr. Olhaye** (Djibouti) recalled that, before the adoption of General Assembly resolution 61/262, the President of the International Court of Justice had addressed a letter to the President of the General Assembly (A/61/837) expressing the Court's deep concern that the proposed action regarding emoluments of the judges would create inequality, and requesting the Assembly to consider postponing action on the draft resolution to a later date. However, no such postponement had occurred. The General Assembly had established a new annual net base salary for members of the International Court of Justice and the judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to apply from 1 January 2007. However, by virtue of the transitional measure established in the resolution, the members of the Court and the judges of the International Tribunals were exempted from the new base salary for their current terms of office, resulting in inequality of treatment, and therefore difficulty in maintaining the balance among the principal legal systems of the world required by the Statute of the Court.

47. His delegation also noted the concern expressed by the Advisory Committee in its related report that inequality of remuneration between the two ad hoc judges sitting in the case of the maritime dispute between Nicaragua and Colombia could have arisen. In fact, that had already happened in Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France). While France had appointed its ad hoc judge in October 2006, before the adoption of the resolution, Djibouti had not appointed its ad hoc judge until 8 January 2007, one week after the resolution entered into force. The resulting inequality in the compensation received by the two judges was contrary to the Statute of the International Court of Justice.

48. It was the responsibility of the Committee to rectify the inconsistencies arising from the implementation of resolution 61/262, taking into account the suggestions of the Secretary-General and the recommendations of the Advisory Committee, above all to remove the obvious inequities and inequality among judges, particularly ad hoc judges.

49. **Mr. Quezada** (Chile) said that his delegation recognized and reaffirmed the contribution to international peace and security of the International Court of Justice, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, whose staff deserved appropriate resources, benefits and remuneration. In keeping with the provisions of the Charter of the United Nations and the Statute of the International Court of Justice, all the judges must be treated equally.

50. **Mr. Sena** (Brazil) said that his delegation fully supported the roles of the International Court of Justice and the International Tribunals, and believed in the principle of complete equality between judges as an essential component of the international adjudication of disputes between States. Accordingly, his delegation was in favour of retaining the current travel and subsistence arrangements and shared the concern that equal remuneration was not being maintained. In that connection, he recalled the responsibilities of the Fifth Committee for administrative and budgetary matters and believed that the General Assembly must intervene to rectify the undesired consequences of General Assembly resolution 61/262, thus safeguarding the principles of the Charter of the United Nations and the Statute of the International Court of Justice.

51. **Mr. Chávez** (Peru) said that the International Court of Justice, as the principal judicial organ of the United Nations, played a central role in maintaining international peace and security through the peaceful settlement of disputes. While General Assembly resolution 61/262 had helped to make the salary arrangements for members of the International Court of Justice and judges of the International Tribunals clearer and more transparent, it had given rise to concerns.

52. The first was its failure to preserve the principle of absolute equality among judges and to remain faithful to the Statute of the International Court of Justice. That was a sensitive matter, as absolute equality was a guiding principle of the Court's work, derived from the principle of equality between sovereign States.

53. The second was the resolution's freezing of the annual base salary, creating inequality between the members of the Court and the staff of the Organization which it served. The Organization's staff continued to benefit from mechanisms to compensate for fluctuations in the cost of living.

54. While his delegation was aware that some members of the Committee were wary of amending resolution 61/262, it took the view that the legal inconsistencies highlighted by the Court itself and the Office of Legal Affairs should be remedied. The General Assembly should respect the rule of law, demonstrate its ability to right wrongs, and ensure that its decisions were once again in line with the Statute of the International Court of Justice, which was an integral part of the Charter of the Organization. His delegation hoped that the Committee would take remedial action at the current resumed session to ensure a return to the equal remuneration arrangements in force before the adoption of resolution 61/262.

55. His delegation could not but express surprise at the contradictory efforts of some delegations to make savings of very little significance in the overall budget at the cost of hampering the work of the Organization's main judicial organ. At a time when the cost of peacekeeping operations was escalating, the resources of the main means of settling disputes peacefully were being eroded. Not only had the time come to rectify a legal error, the time had come to send out a political signal that peaceful settlement of disputes must be favoured above the current tendency to react once conflicts had already resulted in death and destruction.

56. **Mr. Abdelmannan** (Sudan), speaking on behalf of the Group of Arab States, recalled that the President of the International Court of Justice had communicated to the President of the General Assembly the Court's concerns regarding the undesirable effects of resolution 61/262. His Group would give serious consideration to the two remuneration options suggested by the Secretary-General. The principle of equality between judges must be upheld.

57. The long-standing problem of late submission of documentation had once again placed the Committee in the difficult position of having too little time to properly consider the issues before it. For the sake of compliance with legal principles and consistency of decision-making, the Secretariat should provide documents in a timely manner.

58. **Mr. Schuldt** (Ecuador) said that his delegation supported the second of the two remuneration options suggested by the Secretary-General in his report (A/62/538, paras. 75-77) as a means of promoting equality between all judges and backing their contribution to the peaceful settlement of disputes.

Agenda item 138: Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (*continued*) (A/62/681 and A/62/734)

Agenda item 139: Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (*continued*) (A/62/681 and A/62/734)

59. **Ms. Haji-Ahmed** (Director, Operational Services Division), introducing the report of the Secretary-General on the comprehensive proposal on appropriate incentives to retain staff of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia (A/62/681), said that the report addressed several issues and provided information requested by the General Assembly concerning additional data and the non-monetary incentives already available. It also provided the General Assembly with alternative approaches for the calculation of the retention incentive.

60. In developing alternative approaches, the International Tribunals had given careful consideration to the concerns raised by the General Assembly regarding an across-the-board application as opposed to a more targeted approach. However, the Tribunals strongly believed that a targeted approach would ultimately be detrimental to staff morale, thereby negating the intended benefit of the proposed scheme, which was to retain a majority of staff until such time as their services were no longer required.

61. With respect to the request for alternative approaches, the Secretary-General's report currently contained three options for consideration by the General Assembly. Under option A, all staff with two years of service would receive an incentive payment in accordance with the provisions on a termination indemnity contained in the Staff Regulations (annex III). Under option B, an incentive payment would only be considered for those staff members who had over five years of continuous service in the Tribunals. That would limit the payment of any incentive to only those staff members who had served for a substantial period of time, thereby addressing the concerns of both the General Assembly and the International Civil Service Commission that preference should be given to staff with greater seniority and hence the specialized knowledge that the Tribunals wished to retain. Such an approach would also avoid designating staff on a post-by-post basis as either key or non-key. As in option A, payments would be made in accordance with the termination indemnity provisions contained in the Staff Regulations. Lastly, under option C, the payment of a retention incentive would also be restricted to those staff members who had served a minimum of five continuous years of service. However, the amount of that incentive would be capped at a fixed number of months, to be determined by the General Assembly.

62. The 2008-2009 budgets recently adopted for both International Tribunals reflected substantial reductions in posts during 2009, at a time when the Tribunals would be completing their trials. The successful completion of those trials would be contingent on retaining staff in all areas of both Tribunals. The Fifth Committee had consistently supported the International Tribunals in their fight against impunity and in their defence of international justice. It should therefore

continue to do so in order to allow them to complete their work without disruption.

63. **Ms. McLurg** (Chairman of the Advisory Committee on Administrative and Budgetary Questions), introducing the related report of the Advisory Committee (A/62/734), recalled that, in response to General Assembly resolution 61/274, the Secretary-General had proposed a combination of monetary and non-monetary incentives to retain staff until their posts were no longer needed, in line with the respective completion strategy and drawdown plans of the International Tribunals. As the Tribunals moved from trials to appeals during 2009, they anticipated post redeployments as well as the phasing out of 349 posts from the International Criminal Tribunal for Rwanda, 33 per cent of its staff, and 258 posts from the International Tribunal for the Former Yugoslavia, 26 per cent of its staff. Those reductions were reflected in the approved budgets of the Tribunals for the current biennium. The Advisory Committee noted that a further significant reduction in posts was expected from early 2010, when it was anticipated that most trials would be in the appeals stage.

64. The Advisory Committee commended the International Tribunals on their efforts to provide a wide range of non-monetary incentives in order to retain staff and to plan for possible staff shortages as the completion dates approached. It encouraged the Tribunals to continue to explore further incentives for staff, such as their treatment as internal candidates for recruitment and selection in the United Nations system.

65. With regard to the monetary incentive, the Tribunals had proposed three alternative approaches for the calculation of the amount of a retention incentive. The Advisory Committee recognized the critical importance of retaining highly skilled and specialized staff in order to complete all trial proceedings and meet the targets set out in the completion strategies of the Tribunals. A high rate of departures could impede the smooth functioning of the Tribunals and entail considerable costs in terms of the recruitment and training of new staff. Given the consequences of any delay in the completion of their work, the Tribunals should have a variety of tools to retain the services of personnel for as long as they were required. The Advisory Committee also noted that, according to the Secretary-General, in order to be effective, such tools should include a monetary retention incentive combined with the non-monetary measures described in his report.

66. The Advisory Committee therefore recommended that the General Assembly should authorize, on an exceptional basis, the payment of a retention incentive to staff required to remain with the Tribunals until their services and posts were no longer needed, as set out in the drawdown plans of each Tribunal. The calculation of the payment should be made on the basis of the criteria described under option C of the Secretary-General's report, targeting staff with a minimum of five years of service in the Tribunals, and the amount of the incentive should be capped at five months' salary for all staff members, irrespective of the number of years of service. The payment of the retention incentive would become effective from the biennium 2008-2009, as of a date to be fixed by the General Assembly.

67. Lastly, the General Assembly should authorize the payment of a retention incentive on the basis of an ad hoc decision of the General Assembly rather than an amendment to the Staff Rules. The exceptional nature of such arrangements for the International Tribunals would preclude their application elsewhere in the United Nations system.

68. **The Chairman** drew the attention of the Committee to chapter II of the ICSC report (A/62/30 and Corr.1). The General Assembly, in accordance with paragraph 2 of its resolution 62/227, had decided to consider the recommendations contained in paragraph 21 of the report under the agenda items now before the Committee.

69. **Mr. Hunte** (Antigua and Barbuda), speaking on behalf of the Group of 77 and China, said that the Group considered the staff of the International Tribunals to be their most valuable asset. In its resolution 61/274, the General Assembly had already expressed its concern over possible difficulties in retaining and recruiting staff members who would be essential for the completion of the mandates of the Tribunals. However, while the Group welcomed all the non-monetary incentives that the Tribunals had put in place to retain their staff, such measures remained insufficient. As the completion dates for the work of the Tribunals approached, the increasing financial costs that could arise from staff shortages were therefore a matter of concern, since mandates might be left unaccomplished.

70. The Group favoured the payment of a retention incentive on the basis of an ad hoc decision of the General Assembly and without any amendment to the Staff Rules. It noted the solution suggested by the Advisory Committee and looked forward to adopting the best possible decision.

71. **Ms. Simkić** (Slovenia), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia and Moldova, said that the European Union acknowledged the difficulties that the International Tribunals might encounter in retaining and recruiting staff as their work drew to a close. A well-targeted and multi-faceted retention incentive might prove to be a useful tool in addressing the need for the Tribunals to function effectively throughout their completion phases. However, the report of the Secretary-General fell short of providing complete answers to all the questions raised in resolution 61/274; the European Union would therefore seek further clarification.

72. **Mr. Ruíz Massieu** (Mexico), speaking on behalf of the Rio Group, said that the Group recognized the valuable contribution made by staff in enabling the International Tribunals to carry out their mandates effectively. The Group therefore commended the efforts made to provide non-monetary incentives. It would carry out a careful analysis of all the measures proposed regarding monetary incentives, including the recommendations made by the Advisory Committee.

73. **Mr. Kishimoto** (Japan) said that ICSC had made it clear to the General Assembly that special financial retention incentives for the International Tribunals were not appropriate. His delegation concurred with the view expressed by ICSC, which was responsible for regulating and coordinating fair and consistent conditions of service for staff members throughout the United Nations system: even if the retention incentive was deemed an ad hoc measure taken by the General Assembly, it would, as the Advisory Committee itself had cautioned, establish a precedent. His delegation therefore did not support any of the proposals made by the Secretary-General or the Advisory Committee regarding the payment of retention incentives.

74. However, his delegation did support the efforts of both Tribunals to make the most of the existing contractual framework, with a view to removing any uncertainty that staff might feel regarding future employment. Other non-monetary incentives would also be useful in enabling staff to enhance their skills; staff should be given training and career counselling to secure future career opportunities. The low staff turnover rate for the Tribunals proved that such strategies were working.

75. The issue had been discussed at the second part of the resumed sixty-first session based on the assumption that staff might leave the Tribunals on a large scale in the summer of 2007. Since those fears had proved unfounded, there was no need to take any action that might jeopardize the consistency and accountability of the United Nations system as a whole.

Other matters

76. **Ms. Simkić** (Slovenia), speaking on behalf of the European Union, requested clarification regarding the reasons for the delay in considering the revised estimates under sections 1, 3, 28D and 35 related to the strengthening of the Department of Political Affairs, particularly in view of the fact that the report of the Secretary-General (A/62/521 and Corr.1) and the related report of the Advisory Committee (A/62/7/Add.32) had both been issued several months earlier. In that connection, any concerns held by delegations should be discussed in an open and transparent manner.

77. **Mr. Berti Oliva** (Cuba), speaking on behalf of the Joint Coordinating Committee of the Group of 77 and China and the Non-Aligned Movement, recalled that, in a letter dated 7 March 2008 (A/C.5/62/24), the Joint Coordinating Committee had requested the Secretariat to issue a further corrigendum to the report of the Secretary-General on the revised estimates (A/62/521 and Corr.1) in order to reflect its comments and concerns. The Joint Coordinating Committee had taken that step so that the Fifth Committee could focus solely on the financial aspects involved in the strengthening of the Department of Political Affairs, rather than on political matters beyond its purview. However, the Secretariat had declined to issue the requested corrigendum and had instead responded by means of an official letter dated 12 March 2008 (A/C.5/62/25). In view of the fact that the reply from the Secretariat had been received only one day before the planned submission of the Secretary-General's

report to the Fifth Committee, the Joint Coordinating Committee had requested the discussion of the report to be postponed. While the Joint Coordinating Committee had never expected that all of its proposals listed in document A/C.5/62/24 would be reflected in the Secretary-General's report, it nevertheless represented a significant number of countries whose opinions deserved to be taken into account. Thus, in view of the highly political nature of the present report, a postponement for further consultations had unfortunately been unavoidable.

78. **The Chairman** said that the report of the Secretary-General on the revised estimates related to the strengthening of the Department of Political Affairs had been carefully considered by the Bureau and that the concerns raised by the Joint Coordinating Committee would also be taken into account. Discussion of agenda item 128 would therefore continue at the next meeting, as scheduled in the programme of work.

The meeting rose at 11.50 a.m.